

Remarks

The Examiner rejected claims 1-13 and 14-17 under 35 USC § 103 as being anticipated by U.S. Patent No. 4,685,223 to Long ("Long"). The Examiner states Applicant's claimed thickness for the cushion is shown in either U.S. Patent No. 4,501,173 to Dodds ("Dodds"), U.S. Patent No. 4,167,824 to Wolpa ("Wolpa"), or U.S. Patent No. 4,627,179 to McElroy ("McElroy"). Based on the foregoing amendments and following remarks, Applicant submits the cited art does not disclose, teach, or suggest all limitations of Applicant's independent claims and that the rejections should be withdrawn.

Independent claim 1 requires a sandal, a material extending across the socklining for holding the sandal onto a user's foot without extending over the toes. Independent claims 9 and 14 further require a securing mechanism extend around an entire periphery of the outsole and socklining for securing the socklining to the outsole.

Long does not relate to a sandal and includes an upper that extends over the toes. Dodds also does not relate to a sandal and includes an upper that extends over the toes. Wolpa and McElroy relate to insole components and do not disclose, teach, or suggest a sandal or where the upper extends over the socklining but without extending over the toes. Applicant respectfully submits that, because no art shows a sandal and an upper that does not extend over the toes, the combination of the cited art also does not provide these limitations absent some modification to the combination. However, such modification would be improper without some teaching or suggestion in the art to make the modifications.

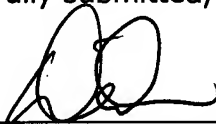
In order for a combination of references to be properly modified in a rejection under 35 USC § 103, there must be some teaching or suggestion in the references to make the suggested modification. Absent the requisite teaching or suggestion, the modification would be improper since there is no motivation for one skilled in the art to

make the modification. As mentioned above, there is no teaching or suggestion in any of the cited art to be modified to relate to an open toe sandal.

In view of the foregoing amendments and remarks, Applicant respectfully submits all claims are allowable over the cited art and that the rejections under 35 USC §103 should be withdrawn.

In view of the provisional double patenting rejection, Applicant submits that the above amended claims are patentably distinct from the claims of U.S. Patent Application No. 10,626,139 and that the provisional double patenting rejection should be withdrawn.

Respectfully submitted,



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